



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/153302

PRELIMINARY RECITALS

Pursuant to a petition filed November 05, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 26, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the sufficiency of petitioner's FS for October and November 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On September 4, 2013 the petitioner provided verification to the agency that her employment was ending at Site Staffing. See Exhibit 2.

3. On September 5, 2013 the agency issued a written notice to the petitioner advising that her FS would increase effective October 1, 2013. That notice also advised the petitioner that she was receiving Transitional FS, due to the cessation of her W2 benefits, through February 2014. See Exhibit 1.
4. Petitioner's last W-2 check was in September 2013.

DISCUSSION

Transitional FoodShare (TFS) benefits automatically extend FS benefit eligibility for 5 months to food units whose Wisconsin Works (W-2) or Tribal (TANF)(TT) cash assistance ends as long as:

1. the member was part of an active FS case in the benefit month and the month the last W-2 or TT payment was issued, and
2. the member was receiving a W-2 or Tribal TANF payment. This does not include W-2 Trial Job Placements or Transitional Jobs case managed by a W-2 agency.

See *FoodShare Wisconsin Handbook*, §5.1.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. The agency notified the petitioner of her TFS benefits on September 5, 2013. This was one day after she provided verification to the agency that her employment was ending at Site Staffing. See Exhibit 2. The notice does not tell her that she can opt out of TFS. However, FS policy says she can:

TFS food units may request a recertification for regular FS at any time during the five-month TFS benefit period. If a food unit requests to end their TFS benefits and be recertified for regular FS benefits, the worker can determine a regular FS allotment amount. The recipient has the choice of which allotment they will receive. If the recipient chooses to receive regular FS benefits and end the TFS benefit, a recertification including a review interview must be completed.

FoodShare Wisconsin Handbook, §5.1.1.7. Had petitioner been notified of her right to request a recertification for regular FS prior to her recertification in November, she likely would have, given the testimony that she would have been awarded more FS with the regular FS. She timely filed her appeal of the September 5, 2013 notice notifying her of the TFS. Accordingly, I find that she may request a redetermination of the FS effective October 1, 2013 and that a redetermination for October and November should occur for regular FS.

CONCLUSIONS OF LAW

1. The agency has not properly determined the sufficiency of petitioner's FS for October and November 2013.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to perform a redetermination of regular FS for petitioner for October and November 2013, issue any FS accordingly, and issue a notice of decision regarding same. This action shall be taken within ten (10) days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of December, 2013

\sKelly Cochran
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 16, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability